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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

MI FAMILIA VOTA, et al.

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as
Arizona Secretary of State, et al.,

Defendants,

and

Speaker of the House Ben Toma and Senate
President Warren Petersen,

Intervenor-Defendants.

LIVING UNITED FOR CHANGE IN ARIZONA, et
al.,

Plaintiffs,

Case No. 22-00509-PHX-SRB
(Lead)

**SUPPLEMENT TO THE JOINT
PRETRIAL ORDER**

Consolidated Cases

No. CV-22-00519-PHX-SRB

No. CV-22-01003-PHX-SRB

No. CV-22-01124-PHX-SRB

No. CV-22-01369-PHX-SRB

No. CV-22-01381-PHX-SRB

No. CV-22-01602-PHX-SRB

No. CV-22-01901-PHX-SRB

1 v.
2 ADRIAN FONTES, in his official capacity as
3 Arizona Secretary of State, et al.,
4 Defendant,
5 and
6 STATE OF ARIZONA, et al.,
7 Intervenor-Defendants,
8 and
9 Speaker of the House Ben Toma and Senate
10 President Warren Petersen,
11 Intervenor-Defendants.

12 PODER LATINX, et al.,
13 Plaintiffs,
14 v.
15 ADRIAN FONTES, in his official capacity as
16 Arizona Secretary of State, et al.,
17 Defendants,
18 and
19 Speaker of the House Ben Toma and Senate
20 President Warren Petersen,
21 Intervenor-Defendants.

22 UNITED STATES OF AMERICA,
23 Plaintiff,
24 v.
25 STATE OF ARIZONA, et al.,
26 Defendants,
27 and
28 Speaker of the House Ben Toma and Senate
President Warren Petersen,
Intervenor-Defendants.

DEMOCRATIC NATIONAL COMMITTEE, et al.,
Plaintiffs,
v.

1 ADRIAN FONTES, in his official capacity as
2 Arizona Secretary of State, et al.,

3 Defendants,

4 and

5 REPUBLICAN NATIONAL COMMITTEE,

6 Intervenor-Defendant,

7 and

8 Speaker of the House Ben Toma and Senate
9 President Warren Petersen,

10 Intervenor-Defendants.

11 ARIZONA ASIAN AMERICAN NATIVE
12 HAWAIIAN AND PACIFIC ISLANDER FOR
13 EQUITY COALITION,

14 Plaintiff,

15 v.

16 ADRIAN FONTES, in his official capacity as
17 Arizona Secretary of State, et al.,

18 Defendants,

19 and

20 Speaker of the House Ben Toma and Senate
21 President Warren Petersen,

22 Intervenor-Defendants.

23 PROMISE ARIZONA, et al.,

24 Plaintiffs,

25 v.

26 ADRIAN FONTES, in his official capacity as
27 Arizona Secretary of State, et al.,

28 Defendants,

and

Speaker of the House Ben Toma and Senate
President Warren Petersen,

Intervenor-Defendants.

Pursuant to the Court’s order, the Parties submit this Supplement to the Joint Proposed Pretrial Order amending the issues to be tried in light of the ruling on the Motion for Clarification. ECF 600. This Supplement is intended to replace Part C.3 of the Joint Proposed Pretrial Order titled “Claims to be Presented at Trial” (see ECF 571, pgs. 11–15).

The Parties have removed the following provisions from the scope of issues for trial based on the Court’s partial summary judgment order and the Court’s ruling that alternative grounds for relief shall not be presented at trial:

- H.B. 2492 §§ 1, 3’s DPOC Requirement
- H.B. 2492 § 4’s rejection of State-Form applications lacking DPOC; and
- H.B. 2492 § 5’s prohibition on voting in presidential elections or early by mail for registrants who lack DPOC.¹

The Parties submit that, pursuant to the Court’s ruling on the Motion for Clarification, the following represents an accurate list of the claims to be presented at trial:

- Undue Burden on the Right to Vote challenge to:
 - (a) H.B. 2492 § 4’s rejection of State Form applications lacking place of birth;
 - (b) H.B. 2492 § 4’s citizenship verification, database check, notice, and criminal investigation procedures;
 - (c) H.B. 2492 § 5’s DPOR Requirement in so far as Defendants’ implementation of this Court’s Section 6 preemption holding would result in the acceptance of Federal Form applications without DPOR for federal-only elections but the rejection of State

¹ Defendants did not initially identify Plaintiffs’ outstanding claims against H.B. 2492 §§ 1 and 3 as those seeking an alternative basis for relief from the Court’s partial summary judgment order. *See* ECF 571 at 12 (“(a) H.B. 2492 §§ 1, 3’s DPOC Requirement”). However, during the Parties’ meet and confer, the State, Attorney General, Republican National Committee, and Legislative-Intervenor-Defendants expressly agreed that the Court’s partial summary judgment order regarding H.B. 2492’s DPOC requirements extends to H.B. 2492 §§ 1 and 3, in addition to §§ 4 and 5. In reliance on that representation, Plaintiffs agree that their outstanding claims directed to H.B. 2492 §§ 1 and 3 need not be presented at trial because of Defendants’ acknowledgement that the Court’s partial summary judgment order supplies relief on those claims.

Form applications without DPOR.²

(d) H.B. 2492 § 7's citizenship verification, database check, reporting, investigation, and prosecution procedures;

(e) H.B. 2492 § 8's voter cancellation procedures based on information regarding citizenship; and

(f) H.B. 2243 § 2's database check requirements, notice, cancellation, and criminal investigation procedures.

- Procedural Due Process challenge to:

- H.B. 2492 § 4's criminal investigation procedures, allegedly without a chance to contest or cure;

- H.B. 2492 § 8's cancellation of a voter's registration, allegedly without an adequate opportunity to contest or cure; and

- H.B. 2243 § 2's cancellation of a voter's registration, allegedly without an adequate opportunity to contest or cure, A.R.S. § 16-165(A)(10).

- Equal Protection challenge to alleged arbitrary and disparate treatment of voter registration applicants and voter registrants under H.B. 2492 and H.B. 2243, specifically:

- Subjecting State-Form applicants to alleged arbitrary and disparate treatment by rejecting State-Form applications lacking DPOR;

- Subjecting voter registration applicants and voter registrants to alleged arbitrary and disparate treatment pursuant to H.B. 2492 and H.B. 2243, specifically:

- H.B. 2492 § 4 (enacting A.R.S. § 16-121.01(D)-(E));³

² Given the Court's rulings on partial summary judgment as to the DPOR requirement, and the lack of any objection to those rulings from any Defendant, Plaintiffs will limit their presentation of evidence on DPOR to two issues: (1) Plaintiffs' standing to challenge the DPOR requirement, and (2) any differential application of the DPOR requirement between State and Federal Form applicants.

³ The Parties agree that these provisions are not covered by the Court's partial summary judgment order *except* the final sentence of A.R.S. § 16-121.01(E): "If the county recorder or


- H.B. 2492 § 7 (enacting A.R.S. § 16-143);
 - H.B. 2492 § 8 (enacting A.R.S. § 16-165(A)(10)); and
 - H.B. 2243 § 2 (amending A.R.S. § 16-165(A)(10) and enacting A.R.S. §§ 16-165(G), 16-165(H), 16-165(I), 16-165(J), 16-165(K)) subjecting voter registration applicants and voter registrants to allegedly discriminatory DPOC requirements, database comparisons, and allegedly wrongful and harassing criminal investigations and prosecutions.
- Equal Protection challenge to:
 - H.B. 2492’s Birthplace Requirement; and
 - H.B. 2492 and H.B. 2243’s provisions subjecting voter registration applicants and voter registrants to allegedly discriminatory database comparisons, and allegedly wrongful and harassing criminal investigations and prosecutions on the bases of race, national origin, and alienage discrimination.
- Fourteenth and Fifteenth Amendment racial and national origin discrimination challenge to allegedly unfettered discretion in voter registration conferred by Ariz. Rev. Stat. § 16-165(I) (the “reason to believe” provision), *as enacted by* H.B. 2243, § 2.
- National Voter Registration Act Section 6 challenge to H.B. 2243 § 2’s cancellation procedures for voters that registered through the Federal Form but lacked DPOC, in violation of Section 6’s requirement that the State of Arizona accept and use the Federal Form.
- National Voter Registration Act Sections 6 and 8(a) challenges to the DPOR Requirement insofar as Defendants’ implementation of this Court’s Section 6 preemption holding would result in the acceptance of Federal Form applications

other officer in charge of elections is unable to match the applicant with appropriate citizenship information, the county recorder or other officer in charge of elections shall notify the applicant that the county recorder or other officer in charge of elections could not verify that the applicant is a United States citizen and that the applicant will not be qualified to vote in a presidential election or by mail with an early ballot in any election until satisfactory evidence of citizenship is provided.”

without DPOR for federal-only elections but the rejection of State Form applications without DPOR.

- National Voter Registration Act 8(b) challenge to discriminatory and non-uniform treatment of registered voters caused by H.B. 2492 and H.B. 2243, specifically:
 - A.R.S. § 16-143, *as enacted by* H.B. 2492 § 7;
 - A.R.S. § 16-165(A)(10), *as enacted by* H.B. 2492 § 8; and
 - A.R.S. §§ 16-165(F), 16-165(G), 16-165(H), 16-165(I), 16-165(J), 16-165(K), *as enacted by* 2022 Ariz. Sess. Laws, ch. 370 H.B. 2243 § 2.
- Civil Rights Act Materiality Provision (52 U.S.C. § 10101(a)(2)(B)) challenge to H.B. 2492, § 4's Birthplace Requirement. A.R.S. § 16-121.01(A).
- 52 U.S.C. § 10101(a)(2)(A) challenge to A.R. S. § 16-165(I) (the "reason to believe" provision), *as enacted by* H.B. 2243, § 2.
- Section 2 of the Voting Rights Act claim against all remaining Challenged Provisions not resolved by the Court's partial summary judgment order.⁴

**THIS SUPPLEMENT JOINT PRETRIAL ORDER IS HEREBY APPROVED ON
THIS 31 DAY OF OCTOBER, 2023.**



 Susan R. Bolton
 United States District Judge

⁴ Per footnote 2, *supra*, Plaintiffs do not intend to present evidence with respect to the DPOR requirement beyond the limited issues identified in footnote 2.

APPROVED AS TO FORM AND CONTENT:

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